

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1026

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To be argued by
JAC M. WOLFF

United States Court of Appeals
FOR THE SECOND CIRCUIT
Docket No. 75-1026

UNITED STATES OF AMERICA,

Appellee,

—v.—

FRED J. ZEEHANDELAAR,

Defendant-Appellant.

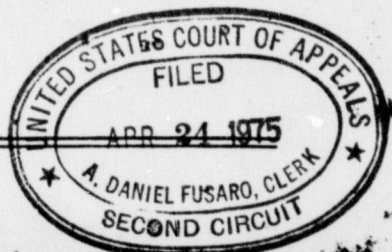
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S REPLY BRIEF
AND SUPPLEMENTAL APPENDIX

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FOR THE SECOND CIRCUIT

Docket No. 75-1026

UNITED STATES OF AMERICA,

Appellee, ^o

—v.—

FRED J. ZEEHANDELAAR,

Defendant-Appellant.

APPELLANT'S REPLY BRIEF

Preliminary Statement

This Reply Brief is filed in response to the answering brief of the Government (hereinafter "Gov. Br.").

The Government Brief relied, in part, upon certain alleged contents of the grand jury minutes herein. Portions of the grand jury minutes in question had not, theretofore, been disclosed to the defense. As a result, the defense moved this Court for an Order directing disclosure of at least those portions of the grand jury minutes. Following the government's eventual consent, this Court, on April 17, 1975, directed that such disclosure be made. Annexed hereto as Supplemental Appendix ["S.A."] "A" is the government's letter consenting to such disclosure, and limiting the scope of its representations concerning the contents of the grand jury minutes (1a). S.A. "B" is the government's letter of April 18, 1975, withdrawing

certain assertions contained in its brief concerning the contents of the grand jury minutes (2a). S.A. "C" is an affidavit of government counsel, dated April 18, 1975 (5a), annexed to which is a S.A. "D", which is alleged to be a copy of a transcript of those parts of the grand jury proceedings relating to the presentation to the grand jury of appellant Zeehandelaar's prior trial testimony (7a).

Annexed hereto, as Supplemental Appendix "E" is a chart which graphically sets forth the defendant's actual prior trial testimony, the edited version of that testimony as it appeared in the indictment returned by the grand jury, and the further edited version of that testimony as it appeared in the amended indictment.

POINT I

The Government's presentation to the grand jury was deceptive, misleading and willfully lacking in candor.

The government has now conceded that the indictment presented to the grand jury failed to indicate that the defendant's testimony had been edited, and "... concedes that as a practical matter asterisks might have in each instance been inserted in the indictment to show more specifically that matter had been eliminated." (Gov. Br., at p. 13, fn. and accompanying text).

In an effort to overcome this obvious impropriety, the government's brief alleged that "in fact, the grand jury voting indictment 74 Cr. 938 had defendant's full trial testimony before it . . .", further noting that "this fact is obvious from even a cursory examination of the grand jury minutes." Apparently, the government's examination, itself, was somewhat too "cursory". The government's contentions prompted the appellant's motion discussed

supra, p. 1, which, in turn, prompted the government to take a second look at the grand jury minutes and to withdraw the above quoted assertions of its brief (S.A. "C", at 5a).

An examination of the brief portion of the grand jury minutes which has since been supplied to the appellant, reveals that government counsel announced to the grand jury his intention to read to the grand jury thirty-one specific pages of Zeehandelaar's prior trial testimony and an undetermined number (perhaps as many as twenty additional pages of such testimony). More precisely, government counsel advised the grand jury: "I am going to read the pages that I referred to, *or at least portions of those pages*, with the permission of Madame Forelady." [Emphasis added] (S.A. "E", 7a, *infra*). The grand jury minutes do not show that any such testimony was, in fact, read to the grand jury. Moreover, there is no indication in the grand jury minutes that any of the grand jurors ever examined the trial transcript in question.

By an affidavit filed with this Court, government counsel seeks to remedy the deficiency of the grand jury minutes by asserting that "... the following pages were actually read to the grand jury ..." (6a). It is respectfully submitted that this government effort to shore up its presentation should be rejected by this Court. Since the government, has, effectively, conceded that the indictment, on its face, is misleading, and since government counsel, before the grand jury, indicated that he might only be reading portions of noted pages to the grand jury, any presumption of regularity which might otherwise attach to the proceedings has been dissipated.

We believe, that, upon argument, the government will concede that the same government attorney presented this case to two different grand juries within a matter of days, and that many other things were read to the grand juries during the course of those presentations.

These factors, as well as the passage of time and the government's demonstrated propensity for confusion during the entire course of the proceedings against Zeehandelaar, all require the conclusion that such a belated, self-serving effort to restore regularity utterly lacks indicia of reliability, and is manifestly unfair to a defendant. *Cf. United States v. Crutchley*, 502 F.2d 1195, at 1200, and authorities there cited.*

The circumstances are few enough in which an attack can be mounted upon the sufficiency of evidence presented to a federal grand jury. If the government's arsenal of protective devices, in this regard, is to be expanded by permitting the government to go beyond the recorded grand jury proceedings, then the whole process will be rendered objectively meaningless.

* * * * *

If, in fact, all of the alleged portions of Zeehandelaar's testimony were read to the jury, the fact remains that the indictment as presented to the grand jury is, on its face, concededly misleading. Logic and experience dictate the conclusion that it is most unlikely that out of the mass of evidence read to the grand jury and testimony given before the grand jury, ranging far beyond the perjury count, that the grand jurors were able to accurately perceive and pass judgment upon the secretly edited testimony.

* *Crutchley, supra*, notes that the recording of all grand jury testimony is not required, but goes on to state: "However, the federal courts considering the requirements governing the recording of grand jury testimony have generally stated that in a criminal case the parties should be in an equal position in their ability to impeach witnesses through the use of grand jury testimony * * *, and hence the practice of only transcribing a portion of the grand jury testimony has been disapproved. * * *" Such selective recording ". . . denies defendants the same opportunity available to the government of impeaching the trial testimony of those witnesses unfavorable to their case." (502 F.2d at 1200).

The authorities relied upon the government to justify its failure to advise the grand jury that a prior grand jury had refused to indict, are thoroughly inapposite. We respectfully urge that this considered tactic on the part of the government, particularly when combined with the defective quotation of the defendant's testimony, depicts a situation so lacking in candor as to amount to an impermissible abuse of the grand jury process. For that reason, the conviction should be reversed and the indictment should be ordered dismissed.

POINT II

The amendment of the indictment was constitutionally impermissible and deprived the defendant of a fair trial.

The government's rationale for eliminating the problems created by the amendment of the indictment appears to be predicated upon the following assertion:

"Finally, the redaction of the indictment did not change the 'focus' of the issues which were to be resolved. As has been illustrated, that focus was initially and remained throughout the trial on a single question: did defendant testify falsely when he said that Lovell was the one who proposed that certain illegal actions be taken in order to import cheetahs into the United States. The answer to this critical question *transcended any single conversation between defendant and Lovell*, depending for its resolution on an examination of everything that happened between them. Redacting the indictment did no more than put this fundamental issue into sharp focus for the jury." (Gov. Br., at pp. 21-2). [Emphasis added].

Thus, according to the government's theory, it didn't matter whether the trial jury thought it was convicting the

defendant as to the telephone conversation with Lovell or as to the conversation at the Arizona Inn with Lovell and Gilbert. In *Bronston v. United States*, 409 U.S. 358 (1973), the Court made clear that such loose standards in the maintenance of perjury prosecutions will not be tolerated. Just as "precise questioning is imperative as a predicate for the offense of perjury." (409 U.S. at 362), a defendant is entitled to be tried upon the charges of the indictment and the facts of the case and not upon some amalgam concocted by the prosecution for the purpose of creating what it considers to be the "fundamental issue".

The government's effort to distinguish "amendment" and "deletion" is simply an exercise in semantics. As was stated in *United States v. Goldstein*, 502 F.2d 526 (3d Cir., 1974):

"While the rule is generally stated that an indictment cannot be 'amended,' it may be more precise to say that a change in the indictment which is substantial or material and not merely one of form, is not permissible. 8 Moore's Federal Practice — Cipes, Criminal Rules ¶ 7.05 [1].***" 502 F.2d at 528.

In our main brief, at pp. 21-2, we set forth several concrete demonstrations of the manner in which the Trial Court and jury, as well as the prosecution's presentation of evidence, shifted the focus of the allegedly perjurious testimony from the telephone conversation to the Arizona Inn conversation. With good cause, the government has utterly failed to deal with those unequivocal examples. How can the government possibly justify asking the witness Gilbert about the contents of a telephone conversation to which he was not a party? Why did the Trial Judge, in marshalling the evidence, fail to make any reference to Lovell's denials of Zeelandelaar's version of the telephone conversation? Why did the Trial Court fail to indicate to the jury that

the first question and answer set forth in the indictment related only to the telephone conversation? Why did the trial jury, in requesting the reading of testimony, limit itself to occurrences at the Arizona Inn? None of this is dealt with by the government's brief.

The government has attached to its brief a copy of the bill of particulars which it filed in this case. That bill of particulars, insofar as it relates to the questions and answers set forth in the amended indictment, presents but one further demonstration of the shift from the telephone conversation to the Arizona Inn conversation. The questions and answers in issue appear at page 3 of the indictment as originally filed by the grand jury (A. 8). The government's bill of particulars clearly treats the defendant's first answer as relating to a conversation to which Mr. Gilbert was a party—the Arizona Inn conversation. In fact, the answer was given with reference to the telephone conversation, as to which Gilbert was not a party. The bill of particulars states:

"The two full answers of defendant appearing on page three of the present indictment are false in that defendant never told either Mr. Lovell or Mr. Gilbert that the 'switching' of cheetahs from the 'Kingdom permit' to them would be difficult because they did not have a contract 'prior to the effective date that the cheetah was placed on the Endangered Species List.' Nor, did defendant state that he considered it 'unlikely' that the Department of Interior would allow him to do the 'switching'. Furthermore, neither Mr. Lovell nor Mr. Gilbert asked him to 'sign a contract dated in March,' and he never responded to any such request by saying 'sorry that can't be done.'"

In truth, defendant told Mr. Lovell and Mr. Gilbert that while it was illegal to import cheetahs into the United States without a permit, he could siphon

off several cheetahs for them from a shipment he expected for another customer. In addition, he told them that they had made a mistake in speaking to an employee of the Department of Interior before they spoke to him because now the Department of Interior was alerted to their desire to import live cheetahs. Lastly, it was he, not Mr. Lovell or Mr. Gilbert, who proposed that a contract for the importation of cheetahs be backdated to before the effective date of the regulations of the Department of the Interior controlling the importation of that animal into the United States so as to avoid the impact of those regulations. The falsity of defendant's answers had a material bearing on the trial under indictment 72 Cr. 1328 for the reasons set forth in paragraph 1(f) above." (Gov. Br., at pp. 12a-13a).

POINT III

The prosecutor was improperly permitted to retry the former false statement case within the context of this perjury prosecution for the purpose of demonstrating that since the defendant, himself, had been on trial in a criminal prosecution, he was motivated to perjure himself.

The government confuses the concepts of "intent" and "motive" (Gov. Br., at p. 23). The issues in this case did not, in the least, involve the question of intent. Nothing about the defendant's prior trial testimony or about any anticipated defense indicated that the defendant might have been mistaken or that the *mens rea* necessary for the crime charged was absent.

It is the Government's actual contention that the status of a defendant in a criminal case can, in and of itself,

be considered by the jury as evidence of his motivation to perjure himself (Gov. Br., at pp. 23-24). The authorities cited by the government, *Reagan v. United States*, 157 U.S. 301, 310 (1975); *United States v. Mahler*, 363 F.2d 673, 678 (2d Cir., 1966); *United States v. Hill*, 470 F.2d 361, 363-365 (D.C. Cir., 1972), all stand for the proposition that when a defendant testifies in his own behalf, *in the case on trial*, his interest in the result of the trial can be taken into account by the jury in assessing his credibility. The government cites no authority for the proposition that it may be considered as substantive evidence of his guilt. That is precisely what the government sought to and was permitted to accomplish in the present case.

The government's arguments in support of this tactic are to be contrasted with its arguments, at Gov. Br. pp. 15-18, in support of its decision not to advise the grand jury that a prior grand jury had refused to indict.** Significantly, the government has made no effort to distinguish or even deal with the reasoning of *Harrell v. United States*, 220 F.2d 516 (5th Cir., 1955), quoted at page 37 of our main brief.

* * * * a jury whether it be a petit or grand jury, is an impartial body whose reason for being is to make up its own collective mind concerning the merit of the matter presented to it solely on the evidence before it. What another jury found at a different trial or presentation should not intrude into its deliberations because, if it does, the very real risk exists that the second body will be influenced not solely by the evidence before it but by what some other jury concluded or failed to conclude on evidence which may, as here, be different in content or quality. * * * (Gov. Br., at pp. 17-18).

POINT IV

The comments of the Prosecutor in summation deprived appellant of a fair trial and violated his right against self-incrimination.

Appellant stands upon the arguments set forth at pp. 31-35, 38-41 of his main brief. The Government has utterly failed to justify the prosecutor's conduct in summation wherein he placed his own credibility in issue, vouched for the credibility of prosecution witnesses, resorted to alleged facts not in the record, and effectively commented upon the defendant's failure to testify.

POINT V

The District Court was without authority to direct that, as a condition of probation the defendant is to pay \$5,000 to the Department of the Interior.

The Government concedes that, "If Zeehandelaar is correct in that he will be forced to make a philanthropic contribution the sentence was concededly improper." (Gov. Br. at p. 28) The sentence in this case was not ambiguous. The Court did not impose a fine. The only way that this Court can "make the sentence legal" (Gov. Br. p. 28) is to strike the forced contribution. To replace it by a fine would be to increase the lawful sentence, and that would, clearly, be impermissible.

CONCLUSION

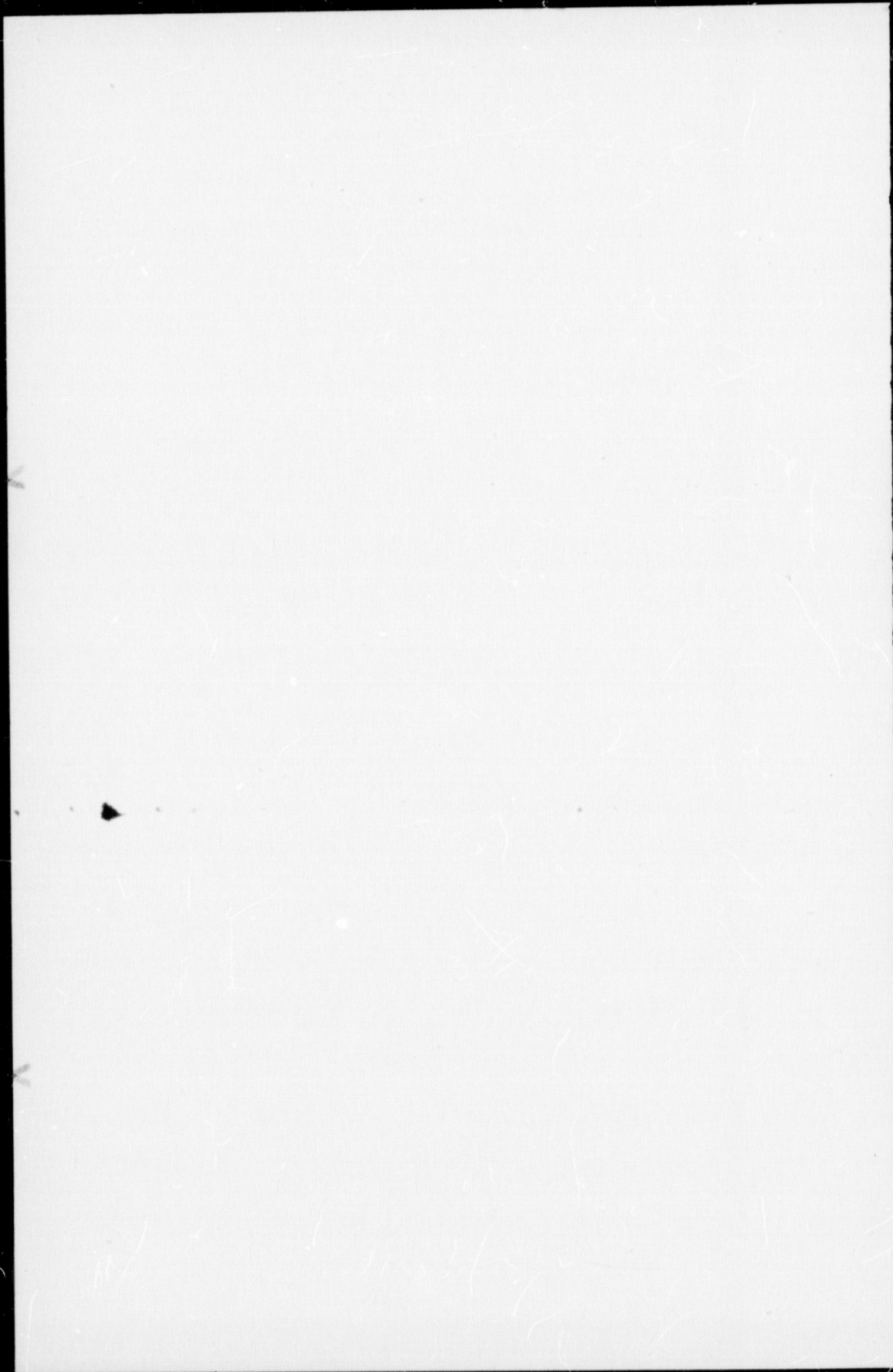
For all of the above reasons the judgment of conviction should be reversed and the indictment should be dismissed.

Respectfully submitted,

JOSEPH E. BRILL
JAC M. WOLFF
Attorneys for Appellant

HENRY J. BOITEL,
Of Counsel.

SUPPLEMENTAL APPENDIX



SUPPLEMENTAL APPENDIX "A"—

LETTER OF WILLIAM R. BRONNER, ESQ.

Dated April 16, 1975

April 16, 1975

WRB: mg
A. Daniel Fusaro, Esq.
Clerk, United States Court of Appeals
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Zeehandelaar,
Dkt. No. 75-1026

Dear Mr. Fusaro:

After discussions between the Government and Henry J. Boitel, Esq., attorney for Zeehandelaar, the parties have agreed that the Government will consent, and by this letter does consent, to the alternative prayer for relief in Zeehandelaar's motion filed April 10, 1975, to wit, disclosure "of all those parts of the grand jury proceedings relating to the revelation to the grand jury of Zeehandelaar's prior trial testimony". Mr. Boitel has authorized me to state that in view of the Government's agreement to this relief, the application in Zeehandelaar's motion for disclosure of "a copy of the transcript of grand jury proceedings which led the instant indictment" is withdrawn. Upon the filing of an order granting the application as consented to, the Government will promptly file with the Court, with a copy to Zeehandelaar's counsel, an affidavit annexing the grand jury minutes.

*Supplemental Appendix "A" —
Letter of William R. Bronner, Esq.
Dated April 16, 1975*

It is also agreed between the parties that, should the Court wish it, the Government may hand up the minutes of the entire grand jury presentation leading to the indictment in this case.

At Mr. Boitel's request, I am advising the court that the "succeeding representations about what transpired in front of the grand jury", referred to in the footnote at page 15 of the Government's brief, relate to the representations made in the footnote on page 18 of the Government's brief.

Very truly yours,

PAUL J. CURRAN,
United States Attorney

By:

WILLIAM R. BRONNER,
Assistant United States Attorney
Tel: (212) 791-1936

cc: HENRY J. BOITEL, ESQ.
233 Broadway
New York, New York 10007

**SUPPLEMENTAL APPENDIX "B" —
LETTER OF WILLIAM R. BRONNER, ESQ.**

Dated April 18, 1975

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE

NEW YORK, N.Y. 10007

April 18, 1975

A. Daniel Fusaro, Esq.
Clerk, United States Court of Appeals
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Zeelandelaar,
Dkt. No. 75-1026

Dear Mr. Fusaro:

Review of the Government's brief on this appeal discloses that it contains an inadvertent misstatement. We apologize for the error and wish by this letter to correct it.

The incorrect statement appeared at pages 14-15 of the brief:

"In fact, the grand jury voting indictment 74 Cr. 938 had defendant's full trial testimony before it . . ."

In point of fact the first 48 pages out of 280 pages of defendant's trial testimony were not marked as an exhibit

*Supplemental Appendix "B" —
Letter of William R. Bronner, Esq.
Dated April 18, 1975*

before the grand jury. Out of the pages marked as an exhibit, approximately 30 pages were actually read to the grand jury. Further, in light of the inaccuracy in the portion of the text quoted above, the first sentence in the footnote appearing on page 15 in the brief is withdrawn.

Very truly yours,

PAUL J. CURRAN,
United States Attorney

By:

WILLIAM R. BRONNER,
Assistant United States Attorney

cc: HENRY J. BOITEL, ESQ.
233 Broadway
New York, New York 10007

JAC M. WOLFF,
655 Madison Avenue
New York, New York 10021

**SUPPLEMENTAL APPENDIX "C" —
AFFIDAVIT OF WILLIAM R. BRONNER, ESQ.
Dated April 18, 1975**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—v.—

FRED J. ZEEHANDELAAR,

Defendant-Appellant.

STATE OF NEW YORK

COUNTY OF NEW YORK ss.:

WILLIAM ROCHE BRONNER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and Attorney for Appellee herein.
2. Attached is a copy of the transcript of those parts of the grand jury proceedings relating to the presentation to the grand jury of Zeehandelaar's prior trial testimony. This affidavit and its enclosure are filed pursuant to this Court's order of April 17, 1975, to which order the Government consented by letter dated April 16, 1975.
3. I was the Assistant who presented this case to the grand jury. I should note that grand jury exhibit 14 consisted of the last 232 pages of Zeehandelaar's testimony and colloquy; it excluded the first 48 pages of his testi-

*Supplemental Appendix "C" —
Affidavit of William R. Bronner, Esq.
Dated April 18, 1975*

mony and colloquy. The exhibit was physically prepared by placing an exhibit tag on page 335 of the transcript of the first trial. The pages comprising the exhibit were not removed from the volumes. The exhibit will be produced at the argument and is available to appellant's counsel for inspection beforehand should he request it.

4. Of the 232 pages included in exhibit 14, the following pages were actually read to the grand jury (page numbers referred to are according to the Appendix pagination): 335-336, 341-347, 372-384, 441-443, 445 and an undetermined number of pages thereafter, 464-467, and 505. Pages 372-384 include Zeehandelaar's entire direct testimony concerning his dealings with Lovell and Gilbert, the subject of Count 2 of the indictment. His testimony on cross-examination on this subject was within exhibit 14, but was not read aloud.

.....
WILLIAM R. BRONNER,
Assistant United States Attorney

Sworn to before me this
18th day of April, 1975
LAWRENCE S. FELD

Notary Public, State of New York
No. 31-6258852

Qualified in New York County
Commission Expires March 30, 1976

**SUPPLEMENTAL APPENDIX "D"—
EXTRACT FROM GRAND JURY PROCEEDINGS**

EJC—3
10-2-74

Sidamon-Eristoff

[BLANK SPACE]

Mr. Bronner: I'm also going to ask the reporter to mark another section of this document, starting at Page 336-A; that would be Exhibit 14. 335-A—I was inaccurate.

[Grand Jury Exhibit 14 marked]

Q. And is that Exhibit 14 an accurate representation of the testimony of Mr. Zeehandelaar in that same proceeding? A. How many pages do you refer to here?

Q. This refers to Pages 335 through 336, 341 through 347, 372 through 376—through 384, 464 through 467, 441 through 443, and 445 and a few pages thereafter, and 505. It goes to another book, but it's all the testimony of Mr. Zeehandelaar. A. Yes, I'm familiar with all of the testimony given by Mr. Zeehandelaar in the proceeding and the portions thereof which you've referred to, the page numbers you've referred to as part of Exhibit 14 of today's date; I have examined them and they are accurate, to my recollection, accurate copies of the testimony that was given at that time.

Mr. Bronner: I'm going to read the pages that I referred to, or at least portions of those pages, with the permission of Madam Forelady. May we excuse the witness.

Foreman: Yes, you're excused.

[Witness Excused]

SUPPLEMENTAL APPENDIX E

The following is defendant's actual testimony, as it appears in the official transcript of the first trial (72 Cr. 1328), intact, unedited and unaltered, of which only a disjointed, incomplete portion is set forth in indictment 74 Cr. 938 (A. 6-8), returned by the October, 1974 Grand Jury.

(B. 379—li. 6) Q. Whom did you phone and what number did you call?

A. I telephoned Mr. Lovelle at this number, 6—area code 602-937-4330.

(B. 379—li. 9) Q. And what conversation did you have with him?

A. I introduced myself. I said "Mr. Lovelle, I have just been advised that you called my office and you told my office this same message"—and I repeated the same contents—"I am calling you back. What can I do for you?"

And he then said—do I continue?

The Court: The entire conversation, if you would.

A. He then said "What is the approximate price?"

And I said "The approximate price is between"—as I recall at this moment—"17 and \$1900 each delivered to the United States."

He then said again "I visited U.S.D.I. yesterday and gave the same story."

I then questioned his qualifications to obtain what he described to be a zoological import permit.

(B. 380—li. 2) I told him that a zoological import permit, which is not the same as a commercial import permit, would require certain qualifications, facilities, et cetera, et cetera, facilities, housing, for the U.S.D.I. to grant him such a zoological import permit.

He then said that he was already aware of such possibility of not being qualified for such zoological permit.

(B. 380—li. 8) He then asked me whether there was any other way of getting cheetahs, of a different kind of a permit.

I then told him that it was my intention to apply for a commercial permit for 20 cheetahs for Wild Kingdom in Orlando, Florida, later in the summer.

I told him also that it is the privilege of the permittee, in this case the permittee of the commercial permit, to ask if the permit has been issued, request permission for whatever reason there might be—

The edited, altered and recomposed version of defendant's testimony on the trial of Indictment 72 Cr. 1328, as set forth in the indictment submitted by the Government to and as returned by the October, 1974 Grand Jury (A. 6-8).

(B. 379—li. 6) Q. Whom did you phone and what number did you call?

A. I telephoned Mr. Lovelle at this number, 6—area code 602-937-4330.

(B. 379—li. 9) Q. And what conversation did you have with him?

[Without any indication of their omission, the first 22 lines of the defendant's answer to the above question were deleted by the prosecutor from the indictment. Those 22 lines begin at B. 379, line 10 and end at B. 380, line 7.]

(B. 380—li. 8) A. . . . He then asked me whether there was any other way of getting cheetahs, of a different kind of permit.

I then told him that it was my intention to apply for a commercial permit for 20 cheetahs for Wild Kingdom in Orlando, Florida, later in the summer. I told him also that it is the privilege of the permittee, in this case the permittee of the commercial permit, to ask if the permit has been issued, request permission for whatever reason there might be—

The final version of defendant's testimony as recited in the indictment, on which defendant was tried, after amendment by the Court, on the Government's motion, which defendant opposed and sought dismissal instead (A. 9-10; A. 21, A. 113).

Q. From whom?

A. From U. S. D. I. From U. S. D. I., for whatever reason it might be a year later, six months later, to sell one or more of the permitted animals, in this case cheetahs, to somebody else.

That privilege is printed on the permit.

I told him also—

(B. 380—li. 24)

Q. What is the substance of the information?

(B. 380—li. 25)

(B. 381—li. 2)

A. I told him also that I didn't consider such permission to be likely to be given to me after I had the Kingdom permit because I would have to provide a contract or an order for Mr. Lovelle, entered into for whatever he wanted, prior to the effective date that the cheetah was placed on the Endangered Species List.

Since we didn't have such a contract, since he didn't and I didn't have such a contract, I told him it was unlikely that such permission, after I received the permit of, let's use the word, switching animals, would be granted.

(B. 381—li. 12)

He then asked me what if I sign a contract dated in March. And I said "Sorry, that can't be done."

(B. 381—li. 13)

The conversation ended by me telling him that since he is in Phoenix, and identified myself as being in Tucson, Arizona, which is only 65 miles, 70 miles away, I advised him that I would be on the program in the Phoenix Zoo on an organized tour on Tuesday, April 18, and I suggested to him that if he wants to talk to me again he might take the opportunity of looking me up while we were at the Phoenix Zoo.

(B. 381—li. 21)

That was the end of the conversation.

Q. The telephone conversation?

A. The telephone conversation.

Q. All right. Now, you didn't see him on April 15, you say?

(B. 382—li. 2)

A. No, sir.

Q. When did you see him, if you saw him at all?

A. He came to visit me, to the best of my recollection, on April 18 at approximately 12:55 p.m.

Q. Can you state what directs your attention to the visit being on April 18 at 12:55 p.m. or thereabouts?

A. Yes, sir. We were about to leave—

Q. Who is the "we"?

A. The delegates, including myself, were about to leave at 1 p.m. by chartered bus for that visit in the Phoenix Zoo.

Q. And had you made an appointment to see Mr. Lovelle on either Saturday, April 15, or on Tuesday, April 18, 1972?

Q. From whom?

A. From U.S.D.I. From U.S.D.I., for whatever reason it might be a year later, six months later, to sell one or more of the permitted animals, in this case cheetahs, to somebody else.

That privilege is printed on the permit.

I told him also—

(B. 380—li. 24)

Q. What is the subject of the information?

(B. 380—li. 25)

A. I told him also that I didn't consider such permission to be likely to be given to me after I had the Kingdom permit because I would have to provide a contract or an order for Mr. Lovelle, entered into for whatever he wanted, prior to the effective date that the cheetah was placed on the Endangered Species List.

Since we didn't have such a contract, since he didn't and I didn't have such contract, I told him it was unlikely that such permission, after I received the permit of, let's use the word, switching animals, would be granted.

(B. 381—li. 12)

He then asked me what if I sign a contract dated in March. And I said "Sorry, that can't be done."

(B. 380—li. 24)

Q. What is the subject of the information?

A. I told him also that I didn't consider such permission to be likely to be given to me after I had the Kingdom permit because I would have to provide a contract or an order for Mr. Lovelle, entered into for whatever he wanted, prior to the effective date that the cheetah was placed on the Endangered Species List.

Since we didn't have such a contract, since he didn't and I didn't have such contract, I told him it was unlikely that such permission, after I received the permit of, let's use the word, switching animals, would be granted.

(B. 381—li. 12)

He then asked me what if I sign a contract dated in March. And I said "Sorry, that can't be done."

[Without any indication of their omission, the last nine lines of the defendant's above answer were deleted by the prosecutor from the indictment. Those lines begin at B. 381, line 13 and end at B. 381, line 21.]

Lovelle on either Saturday, April 15, or on Tuesday, April 18, 1972?

A. No, sir, except that I suggested that he might want to visit me in Phoenix, but it was not an appointment.

(B. 383—li. 2) Q. What happened before you got on the bus with the other delegates to go to the Phoenix Zoo?

A. A few minutes prior to boarding the bus one delegate—and I don't recall his name—came to me, and I was waiting in the lobby, "There are two men to see you."

I followed the delegate into the lobby and he pointed the two men out to me. One of these two gentlemen was, as it now appears, the same gentleman who was here, Mr. Lovell. The other one, I still do not recollect his name. They were standing in the lobby.

They said, "I want to see you."

I said, "This is strange because I'm going to be leaving for the Phoenix Zoo in a few minutes. You could have saved yourself trouble if you came to the Phoenix Zoo this afternoon."

They said, no, they have to be here for reasons.

I said, "I have little time. I don't want to miss my charter bus."

He then, again, brought up the subject, very briefly, whether I could in some way help him either import cheetahs or sell cheetahs under a permit for him, saying something.

I told him we discussed it already at greater lengths in the past Saturday and there was nothing

(B. 384—li. 2) further I could do at that time.

Then—I was kind of made for the inconvenient time—I apologized because I had never seen these gentlemen before. I apologized for my erratic behavior, and then I rushed out and made the bus.

(B. 384—li. 7) Q. Did you ever hear from or see Mr. Lovell again?

A. Never.

Q. Did you ever state to Mr. Lovell that there were two ways he could get a cheetah through you, and then did you say to him that one way was that you had an order of cheetah coming in for Lion Country Safari and that you could siphon off two animals from that order for them or you could date back the order? Did you ever say that in substance or in words?

(B. 384—li. 16) A. No, sir.

(B. 384—li. 9) Q. Did you ever state to Mr. Lovell that there were two ways he could get a cheetah through you, and then did you say to him that one way was that you had an order of cheetah coming in for Lion Country Safari and that you could siphon off two animals from that order for them or you could date back the order? Did you ever say that in substance or in words?

(B. 384—li. 16) A. No, sir.

(B. 384—li. 9) Q. Did you ever state to Mr. Lovell that there were two ways he could get a cheetah through you, and then did you say to him that one way was that you had an order of cheetah coming in for Lion Country Safari and that you could siphon off two animals from that order for them or you could date back the order? Did you ever say that in substance or in words?

(B. 384—li. 16) A. No, sir.

2 copies received
John D. Gordon III
Asst SA
April 23, 1975
12:30 PM

